

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DELIA M. HAYES,

Plaintiff,

v.

COSTCO WHOLESALE
CORPORATION, *et al.*,

Defendants.

No. 1:20-cv-01233-NONE-EPG

ORDER ADOPTING, IN PART, FINDINGS
AND RECOMMENDATIONS
RECOMMENDING THAT DEFENDANT'S
MOTION TO DISMISS BE GRANTED AND
DIRECTING THE CLERK OF COURT TO
ASSIGN A DISTRICT JUDGE FOR
PURPOSES OF CLOSING THIS CASE.

(Doc. Nos. 20, 25)

Plaintiff Delia M. Hayes is proceeding *pro se* and *in forma pauperis* in this action which was previously removed to this federal court. This action proceeds on plaintiff's first amended complaint against defendants Costco Wholesale Corporation, Paul Cano and Jim Harris, Jr., on various causes of action related to an incident which allegedly occurred at a Costco store. This matter was referred to a United States Magistrate Judge. (Doc. No. 24.)

On January 12, 2021, the assigned magistrate judge issued findings and recommendations recommending that defendant's motion to dismiss (Doc. No. 20) be granted and that plaintiff be granted thirty days leave to amend with respect to certain claims. (Doc. No. 25.) Those findings and recommendations were served on the parties and contained notice that any objections thereto were to be filed within fourteen (14) days after service thereof. (*Id.* at 9.)

1 Rather than waiting for the findings and recommendations to be reviewed, on January 15,
2 2021, plaintiff filed a motion to amend her complaint. (Doc. No. 26.) The magistrate judge
3 denied the motion without prejudice for non-compliance with the court's local rules in light of the
4 fact that plaintiff did not attach a proposed amended complaint to her motion to amend. (Doc.
5 No. 28.) Plaintiff filed a second motion to amend her complaint on February 2, 2021, along with
6 a request for a 90-day continuance to obtain the assistance of counsel. (Doc. No. 31.) On
7 February 3, 2021, noting plaintiff's continued non-compliance with the requirement that a
8 proposed amended complaint be attached to a motion to amend, the magistrate judge denied
9 plaintiff's motion, but stayed this action for thirty days to provide plaintiff time to obtain counsel.
10 (Doc. No. 32.)¹

11 Meanwhile, on January 26, 2021, plaintiff filed objections to the findings and
12 recommendations regarding the operative first amended complaint ("FAC"). (Doc. No. 29.)
13 Defendants filed a response to the objections on February 2, 2021. (Doc. No. 30.) Plaintiff's
14 objections do not undermine the magistrate judge's reasoning in recommending dismissal of the
15 claims asserted in the FAC.

16 On March 9, 2020¹, defendants filed an additional response, noting that plaintiff had
17 failed to amend her complaint within thirty days of the February 3, 2021 order. (Doc. No. 33.)
18 Defendants therefore requested that plaintiff's complaint be dismissed with prejudice and that if
19 any leave to amend be granted, it be more limited than the magistrate judge initially
20 recommended, in light of subsequent events. (*Id.* at 2.)

21 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this court has conducted a
22 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
23 magistrate judge's findings and recommendations are supported by the record and by proper
24 analysis. However, in light of plaintiff's repeated requests to amend her complaint, which were
25 both denied for obvious procedural defects, and plaintiff's apparent inability to obtain counsel,
26

27 ¹ To the extent that either of the magistrate judge's orders denying plaintiff's motions to amend
28 require *de novo* review by the undersigned, the court has independently examined those rulings,
 finds them to be correct, and adopts them.

1 the court also finds that granting further leave to amend in this case would be futile.

2 Accordingly,

- 3 1. The findings and recommendations issued on January 12, 2021, (Doc. No. 25), are
4 adopted in part;
- 5 2. Defendant's motion to dismiss (Doc. No. 20) is granted;
- 6 3. Plaintiff's first amended complaint is dismissed, with prejudice, and without leave to
7 amend; and
- 8 4. The Clerk of Court is directed to assign a district judge for the purposes of closing this
9 case and to close this case.

10 IT IS SO ORDERED.

11 Dated: **March 12, 2021**

12 
13 _____
14 UNITED STATES DISTRICT JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28